FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

NO. 1236

JONES & LAUGHLIN STEEL CORPORATION,
Petitioner,

v.

UNITED MINE WORKERS OF AMERICA and JOHN L. LEWIS as a representative member thereof; NATIONAL LABOR RELATIONS BOARD, and PAUL M. HERZOG, JOHN M. HOUSTON and GERARD D. REILLY, the members thereof; J. A. KRUG, Secretary of the Interior; and CAPTAIN N. H. COLLISSON, Federal Coal Mines Administrator, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Jones & Laughlin Steel Corporation respectfully prays that a writ of certiorari be issued to review the judgment entered in this case on December 16, 1946, by the United States Court of Appeals for the District of Columbia, by which that Court affirmed a summary judgment of the United States District Court for the District of Columbia, dismissing petitioner's complaint praying a declaratory judgment to settle a dispute between it and the respondent United Mine Workers of

America, and incidental injunctive relief against all of the respondents.

JURISDICTION.

(a) Opinion of the Court below.

The opinion of the United States Court of Appeals for the District of Columbia is reported as *Jones & Laughlin Steel Corporation v. United Mine Workers of America, et al.*, 159 Fed. (2d) 18 (1946).

(b) Jurisdiction of this Court.

Said decision of the United States Court of Appeals for the District of Columbia was entered on December 16, 1946 (R. 188, 192). A petition for rehearing was filed in due course (R. 193), but was denied on January 13, 1947 (R. 222). It is believed that this Court has jurisdiction to review the decision, upon writ of certiorari, under the provisions of Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347).

STATEMENT OF THE MATTER INVOLVED.

For many years the petitioner has owned and operated four bituminous coal mines, situate near each other, in the vicinity of Pittsburgh, in western Pennsylvania. The mines are extremely large ones, both in the areas of their operations underground, and in their rates of productivity of coal. In their operations, the petitioner has, for years, regularly employed a force of about three thousand rank and file coal miners, plus a force of about one hundred thirty-five supervisory officers and agents (R. 6 a).

Since some time before 1935, all of the rank and file coal miners have belonged to the respondent United Mine Workers of America, and as their labor Union it has made annual contracts fixing the wages and conditions of their employment, and has also represented them as individuals—most aggressively, it appears without contradiction (R. 55 a, etc.)—in the adjustment of their grievances against the petitioner; *i.e.*, in the protection and advancement of their interests in any matter in which they are in conflict with those of the petitioner, as owner and operator of the mines. In short, the rank and file miners have been a solidly organized labor union group. In contrast, the much smaller body of supervisory officers and agents have always (at least until recently) been free from any union affiliation or influence. They have not belonged to any union, and have not been represented for any purpose by any union.

This open shop status of the mine supervisors' employment is in keeping with the traditions of the industry, and with those of the miners' unions; and in past years it has been justified by leading representatives of

both mine operators and mine labor, on the ground that, under the extremely hazardous conditions which exist in coal mines, and under current laws—which make management and the mine supervisors responsible for the disciplined observance of safety laws and regulations—the mine supervisor, if he is to discharge his duties as the representative of both management and of the law, must be independent of any direct control or influence by the rank and file miners or their union.

During 1944, the United Mine Workers of America determined to abandon this traditional view, and commenced a campaign to "organize" as members and constituents the supervisors in coal mines throughout the country, and, by proceedings before the National Labor Relations Board, to qualify itself as their exclusive representative, under the National Labor Relations Act, for the purposes of collective bargaining. This campaign has been resisted, by mine owners generally, upon the traditional grounds which have been described: that the representation of both rank and file miners and their supervisors by a single labor union would tend greatly to increase the inevitably hazardous conditions of the mines.

The organizational phase of the Union's campaign has been pressed with great energy, in all of the larger bituminous coal fields, but the other phase—that involving proceedings before the Labor Board—has thus far reached no significant conclusion, largely because the legal status of coal mine supervisors under the National Labor Relations Act has been and still is a subject of grave doubt and dispute. The first proceeding raising this legal question is still pending and undetermined. It is described in the record of this case. It was com-

menced in September, 1945, when the Labor Board accepted jurisdiction of a petition, filed under Section 9 of the Act, by which the Union sought certification and qualification as exclusive representative of the one hundred thirty-five supervisors in the petitioner's four coal mines.

In that proceeding, the Board has held a hearing; has issued a "Decision and Direction of Elections," on March 7, 1946, (66 N.L.R.B. 386); has held an election on April 1, 1946, at which a majority of the one hundred thirty-five supervisors voted in favor of the Union; has issued a "Certification of Representatives," on May 27, 1946, "certifying" the Union as exclusive representative chosen in the election; and, at later times during 1946, has conducted supplemental proceedings under Section 10 of the Act; and has made a final order, issued on December 30, 1946, which calls upon the petitioner to recognize the Union as exclusive representative of the one hundred thirty-five mine supervisors (71 N.L.R.B. ....; L.L.R. p. 7488). In an effort to test the validity of this decision of the matter, and to clarify as promptly as possible the status of mine supervisors under the National Labor Relations Act, the Board filed a petition for the enforcement of its final order, on the day the order issued, in the Third Circuit Court of Appeals. The case is now pending and undecided in that Court.

If the Board's final order of December 30, 1946, is ultimately upheld by the Third Circuit Court of Appeals, or by this Court, the petitioner will be obliged to treat the Union as exclusive representative of the one hundred thirty-five supervisors in its four mines. If, on the other hand, the Board's final order is denied enforcement by the Courts, it will mean that the Union has not been en-

titled to command recognition as exclusive representative of the supervisors. In either event, the statutory proceeding before the Board and in the Courts would, in any ordinary circumstances, promise an orderly and lawful settlement of the status of the mine supervisors and the rights of the union under the federal law, and by so doing would tend to achieve one of the most important purposes of the National Labor Relations Act. In this case, however, the chances of such an orderly settlement, under the processes provided by the Labor Act, have been jeopardized by a series of extraordinary circumstances.

On April 1, 1946—the day of the supervisors' election at petitioner's four mines—the Union called a strike of all of its constituents: rank and file miners in mines throughout the country. During the strike which followed and continued about eight weeks, the available supplies of coal diminished to such a point that the industry of the entire country was largely paralyzed.

On May 21, 1946, intending to meet this national emergency, President Truman seized all of the mines, including the four owned by petitioner. He acted under the authority granted him by Section 5 of the War Labor Disputes Act (50 App. U.S.C. 1505; p. 27 *infra*). The seizure was accomplished by Executive Order No. 9728 (11 Fed. Reg. 5593; R. 15; p. 21 *infra*), which authorized the Secretary of the Interior to "take possession" of the mines and to operate them, within the limitations laid down by the statute and others set by the Executive Order itself. Amongst the latter were directions to the Secretary "to maintain customary working conditions in the mines" (Sec. 7; R. 18 a); to permit the managements of the mines "to continue with their managerial

functions * * *" (Sec. 6; 17 a); and to apply to the National Wage Stabilization Board "for appropriate changes in the terms and conditions of employment" in the mines, following such negotiations as he should deem necessary "with the duly constituted representatives of the employees" (Sec. 3; R. 17 a).

The Secretary of the Interior at once declared himself in possession of the mines, and, without changing any established management or practice of management, or displacing or replacing any rank and file miner, mine supervisor, or mine manager from his normal position, commenced to negotiate with the Union a contract which would end the strike.

On May 29, 1946, a week after the seizure, such an agreement was made.[1] It is printed in the present record at R. 42 a. Its provisions dealt almost wholly with the wages and working conditions of rank and file coal miners; but it contained one provision, the one which is important in this case, which touched upon the status of mine supervisors. This was paragraph 11 (R. 49 a) which provided that in settling "questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers" employed in the mines, "the Coal Mines Administrator[2] will be guided

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[1]This agreement has since been commonly known as the "Krug-Lewis agreement." It was under study by this Court in the recent cases of *United Mine Workers of America, et al. v. United States,* decided here on March 6, 1947, and not yet reported.

[2]Shortly after the seizure of May 21, 1946, the Secretary of the Interior delegated his powers and duties under Executive Order 9728 to an appointive agent, to whom he gave the title of "Coal Mines Administrator" (see R. 19 a). The office is held at present by the respondent, Captain N. H. Collisson, U.S.N.R.

by the decisions and procedure laid down by the National Labor Relations Board."

This provision of the Krug-Lewis agreement shortly gave rise to the legal dispute presented for adjudication by the petitioner's original Complaint in this case. On May 29, 1946, at the time the agreement was made, although the Union had no conceivable legal standing to speak or act as representative of any supervisor in any other mine in the country, it had been "certified" by the Labor Board—in the Certification of May 27, 1946, mentioned above—as representative of the supervisors in the petitioner's four mines. Immediately after the Krug-Lewis agreement was made, the Union declared that this certification was a "decision laid down by the National Labor Relations Board" which had established its legal right to act as exclusive representative of the petitioner's one hundred thirty-five mine supervisors, and demanded that the Coal Mines Administrator should recognize it and bargain with it as such (see R. 9 a-10 a). The Coal Mines Administrator reported this demand to the petitioner; and the petitioner immediately took issue with the Union's legal proposition, and insisted that the Certification was not a legally significant decision or adjudication of the Union's status; that it could deserve no legal weight unless it should be upheld in further proceedings before the Board and in the Courts; that the representation of both rank and file miners and their supervisory officers by a single labor union would be dangerous and destructive in fact, and unwarranted by the National Labor Relations Act or the federal laws in general; and that the Administrator should, therefore, deny the Union's demand for recognition (see R. 11 a-13 a).

In an affidavit filed by the Coal Mines Administrator, it is made to appear that, in an effort to settle this dispute between the petitioner and the Union, over the Union's legal status, he sought the advice of the National Labor Relations Board, and that the Board advised him in some informal way that, by virtue of the certification, the Union was "entitled to recognition as * * * bargaining agent" of the one hundred thirty-five supervisors (R. 40 a). In reliance upon this opinion, the Administrator made known his conclusion that he must recognize the Union, at least, pending some further and different adjudication of its status (see R. 12 a, 40 a, etc.).

On June 13, 1946, in this state of the matter, the petitioner filed the Complaint which commenced the case now presented here. The Complaint sought a declaratory judgment of the question which had been treated as controlling by the Coal Mines Administrator, *viz.*: the question whether the certification had, or had not, established the Union's legal right to demand that the Administrator recognize it as exclusive representative of the one hundred thirty-five mine supervisors. As an incidental remedy, required to make declaratory relief ultimately effective, the Complaint sought also an injunction preserving the *status quo* pending the final decision of the case (R. 13 a, 14 a).

In response to the Complaint, the respondents filed a motion to dismiss (R. 60 a) and a motion to dismiss or for summary judgment, both based upon the same general grounds: that the Complaint and its supporting affidavits (R. 52 a; 58 a) had stated no cause of action upon which the Court could grant relief. On June 25,

1946, the District Court conducted a single hearing upon both motions, and on the next day it made an order which sustained both, dismissed the Complaint, and entered a summary judgment against the petitioner (R. 142 a). From this final judgment, the petitioner immediately took its appeal to the United States Court of Appeals for the District of Columbia.

In the Transcript of Record are references to a number of things which occurred while the case was pending and undetermined in the District Court of Appeals. Of these things, only two appear to need particular mention here.

One of these two is the history of a proceeding before the National Wage Stabilization Board. In keeping with its decision on the merits, the District Court had, of course, denied the petitioner's prayer for interlocutory injunctive relief. During the weeks which followed, the Coal Mines Administrator negotiated, and on July 17, 1946, he executed, a written agreement with the Union, which dealt with certain conditions of employment of supervisors in the petitioner's four mines, but which did not settle the dispute over the right of the Union to recognition as their representative (R. 253, 254, ff.). Such an agreement was subject to approval by the National Wage Stabilization Board, under Section 3 of Executive Order 9728 (R. 17 a; p. 10, *infra*), and the Administrator therefore presented it to that Board (R. 247-249). On July 30, 1946, the Board made an Order which approved certain of the provisions of the Agreement, but which did not—and this is

an important thing here—decide or purport to decide either that the Union should or that it should not be recognized as exclusive representative of the one hundred thirty-five mine supervisors (R. 155-157).

The other of the two developments, pending the decision of the appeal in the Court below, was the commencement by the Union of the supplemental proceedings before the National Labor Relations Board, which are mentioned above. On August 22, 1946, the Union filed with the Labor Board a Charge, pursuant to Section 10 (b) of the National Labor Relations Act, which complained that the petitioner had denied it any recognition as representative of the one hundred thirty-five supervisors (R. 159). On August 28th, the Labor Board issued a Complaint against the petitioner, based upon this Charge. On September 7th, the petitioner filed an answer to the Complaint which admitted and justified its denial of the Union's demands for recognition (R. 165). On these pleadings, the Labor Board conducted the further proceedings, under Section 10 of the Act, which are described above and which led to its final order of December 30, 1946, now under review in the Third Circuit Court of Appeals.

On November 12, 1946, the appeal was argued in the District Court of Appeals (R. 186), and on December 16th that Court handed down the decision here presented for review (R. 188), affirming the dismissal of petitioner's complaint by the District Court. As is stated above, the petitioner's Petition for Rehearing (R. 193) was denied by the Court below on January 13, 1947 (R. 222).

In its decision of the case, the Court of Appeals assumed that the Order entered by the National Wage Stabilization Board on July 30, 1946, had ordered or approved the recognition of the Union, by the Coal Mines Administrator, as exclusive representative of the one hundred thirty-five mine supervisors. An examination of the Order of July 30th (R. 155) and of the Agreement it discusses (R. 253), will show, as it stated above, that the Order did not decide or affect this question of recognition.

STATEMENT OF QUESTIONS PRESENTED.

1. Has the Federal Coal Mines Administrator the power, under the War Labor Disputes Act and Executive Order No. 9728 (11 Fed. Reg. 5593), to recognize as exclusive representative of the supervisory officers serving in a coal mine subject to the current governmental seizure, a labor Union which has not qualified and possibly cannot qualify as such representative under the National Labor Relations Act?

2. Has the National Wage Stabilization Board any power or jurisdiction to order the recognition of such a labor Union as exclusive representative of such coal mine supervisors?

3. Is a Certification of Representatives, issued by the National Labor Relations Board under Section 9 of the National Labor Relations Act, sufficient in the absence of any final order or any further proceedings before that Board, to qualify such a Union to command recognition by the Federal Coal Mines Administrator as exclusive representative of such mine supervisors?

4. Has an otherwise competent Federal District Court the power and jurisdiction to control the decisions of the Federal Coal Mines Administrator, in a dispute between the owner of a seized mine and an allegedly unqualified labor union, over the right of the latter to act as exclusive representative of such mine supervisors?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. At every stage, this case has presented the important question which was considered but not decided in *American Federation of Labor v. N.L.R.B.*, 308 U.S. 401 (1940) and in *Inland Empire District Council v. Millis*, 325 U.S. 697 (1945): the question whether the law affords any remedy to a person injured by a legally unjustified Certification of Representatives, issued by the Labor Board under Section 9 of the National Labor Relations Act.

At the time the complaint was filed, the Union relied wholly upon the Board's certification to establish its right, under the Krug-Lewis agreement, to command recognition by the Coal Mines Administrator; the petitioner was convinced, as it insisted in its dealings with the Administrator, that the certification was wholly insufficient to make any such change in the Union's status; and the Administrator's decision, that he must grant the Union's demand for recognition, was based, as he declared (R. 50 a), upon the Labor Board's informal and unpublished opinion and advice that he must do so. Thus, as matters stood when the case began, the proposal was to give to the bare certification—plus the Labor Board's informal opinion—the effect normally given only to a valid, final order of the Board, upheld after review by the Courts.

That this result threatened grave and irreparable injury to the petitioner—if the certification was wrong—is shown without contradiction by the affidavits (see R. 52 a, 15 a), for the law would provide no adequate

remedy for such injuries as are likely to follow any material impairment of the efficiency and authority of the supervisors who are in direct charge of the underground operations of the four mines, and solely able to keep them safe. Against this kind of injury, the review provisions of Section 10 of the National Labor Relations Act provide no remedy; for, under that section, a Labor Board certification is not a "final order" and is not reviewable: *American Federation of Labor v. N.L.R.B., supra.* Thus the question arises here, as it did in the *American Federation of Labor* case and the later case of *Inland Empire District Council v. Millis, supra,* whether, in the absence of a statutory or administrative remedy, a federal District Court has jurisdiction to afford one.

In this connection, it should be observed that the petitioner did not ask the District Court to decide the question whether a single union *can* be qualified under the National Labor Relations Act as exclusive representative of both rank and file miners and their supervisors. It is conceded, as it was in the District Court, that that question can be settled only in a statutory proceeding, under Section 10 of the Act, such as that now pending in the Third Circuit Court of Appeals. Instead of that question, the District Court was asked to decide whether, by virtue of the certification alone, the Union *had been* qualified to command recognition as exclusive representative of the supervisors in the four mines.

2. This case presents, also, a second question which is probably of equal importance: the question of the effect of the "seizure" of a mine (or other industrial enterprise) under the War Labor Disputes Act, upon the ordinary relationships of the property owner and his employees.

In its decision of this case, the Court below relied upon its conclusion that, during such a "seizure," the Government stands in the shoes of the property owner, and takes over and possesses all of the powers and rights of the property owner to recognize or deny recognition to labor unions; *i.e.*, that, during such a period of governmental operation, the Government becomes and is the employer of both rank and file, supervisors, and the rest of management (see R. 190).

This view of the law had been urged upon the Court below by the Union and by the governmental defendants. By accepting it, the Court below was enabled to treat as irrelevant the serious questions concerning the validity and the effect of the certification, which had been raised by the complaint; for it is true that an employer can, if he chooses, waive the protection afforded him by the National Labor Relations Act.

It is true also that in its recent decision in the cases of *United Mine Workers of America, et al., v. United States, supra,* this Court has held that the Government has, during the current seizure, such a proprietary interest in the operation of the coal mines as entitles it to injunctive relief against a breach of its contract with the Union and its members—and so, to that extent, occupies a position at least equal to that of an "employer."

This doctrine, however, cannot be extended to justify the conclusion, accepted by the Court below, that the Government is currently the owner for all purposes of the mines, or the employer for all purposes of those who are engaged at work in the mines; for such an extension would have consequences which are contrary to the public interest, to the interests of industry and labor

alike, and to the apparent purposes of the War Labor Disputes Act, of Executive Order No. 9728, and of the Regulations issued under the Executive Order.

It is neither necessary nor desirable to attempt here to list all such consequences of the doctrine laid down by the Court below; but certain of them, having direct bearing in this case, should be noticed.

Of these difficult consequences of the doctrine under discussion, the first and most obvious is that if the Government is the employer of those who work in the mines, then the ordinary rights of the employees under the National Labor Relations Act are wholly suspended, during the period of governmental operation; for, under Section 2 (2) and 2 (3) of that Act (p. 29, *infra*), its provisions have no application to the relationships between the Government and its employees, and the latter have no rights under the Act.

That the Executive Order seizing the coal mines (and the Regulations issued under it) were not intended to have any such result is shown by the conduct of the governmental officers in numerous recent proceedings under the National Labor Relations Act against coal mine owners such as that described above, in which the Labor Board's final order of December 30, 1946, (the order now under review in the Third Circuit Court of Appeals) held that in August, 1946, long after the seizure of the mines and the judgment of the District Court in this case, the petitioner remained the employer of the mine supervisors in its four mines, and retained the liabilities of an "employer" under the Act.

This decision by the Board is consistent with the views of the Coal Mines Administrator, and with the

weight of precedent legal authority on the point: see *Glen Alden Coal Co. v. N.L.R.B.*, 141 Fed. (2d) 47 (3 C.C.A. 1943); *N.L.R.B. v. West Kentucky Coal Co.*, 152 Fed. (2d) 198 (6 C.C.A. 1945); and *In re Ken-Rad Tube and Lamp Corp.*, 56 N.L.R.B. 1050 (1944). But if it is right, then the conclusion of the Court below in this case is not; for if, during the current seizure, the mine owner continues to bear the obligations of an employer under the National Labor Relations Act, he must be accorded at the same time the rights of an employer under that Act, and amongst those rights is the right to deny recognition to a union, of whose qualifications he has just doubt, until its right to such recognition has been established by a final order of the Board and, if necessary, tested in the Courts. The decision of this case by the Court below, as has been observed, rested wholly on a squarely contrary hypothesis.

Although many others might be considered, the petitioner will discuss only one other legally unacceptable consequence of the doctrine that the Government is, during the period of the current seizure, the owner of the mines and the employer of the miners. This is the effect of that doctrine upon property rights and civil liabilities. If the Government were for the time being the tenant in possession of the mines for all purposes—the owner, operator and employer—then, as a matter of constitutional principle, it would not be possible to leave the burdens, and the civil (and criminal) risks, of ownership and operation with the dispossessed private operators. Instead, in that situation the Government would be obliged to assume as its own (to cite a few examples) the burdens of maintaining safe and lawful conditions in the mines, of compensating miners injured in the course of their work, and of compensating

the temporarily dispossessed operators for injuries done to their property, as results of the government's failure to discharge this duty to operate safely. There is little or no judicial authority on the point, but the War Labor Disputes Act, Executive Order 9728, and the present Regulations, all make it clear that the Government has intended to assume none of these burdens, and that it has, on the contrary, intended to leave with the private owners their ordinary duty—and in general their ordinary power—to maintain such standards of safe mine operation as are required by state mining laws, and their ordinary commercial and legal liabilities to suffer and pay the costs of mine accidents. If the situation were the other way around (as the Court below assumed it to be), the petitioner would have had much less reason to commence this suit.

Such considerations justify a review here. Whether the current seizure of the coal mines continues for a few more weeks or months, or for a much longer time, the Courts must ultimately determine the question attacked in this case by the Court below: the question of the effects of the seizure upon the ordinary rights of mine owners and mine workers. For many reasons, of which the two just considered appear typical, this question cannot be settled as easily as the Court below attempted to settle it: by holding simply that the Government has, by the act of seizure, condemned or requisitioned the mines, and assumed all the rights, powers and liabilities of an owner. And, finally, if that conclusion of the Court below is wrong, then its judgment of the case is wrong also; and a review here is justified on that ground.

CONCLUSION.

For the reasons herein stated, the petitioner submits that a review by your honorable Court of the decision of this case by the Court below is fully justified; and it respectfully prays the issuance of a writ of certiorari to review said decision.

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APPENDIX.

Executive Order 9728.

(11 Federal Register, p. 5593)

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES.

WHEREAS after investigation I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892) as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander-in-Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines,

and to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate.

All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order.

5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the management of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN.

THE WHITE HOUSE,
May 21, 1946.

Selective Training & Service Act.

Act of September 16, 1940, c. 720; 54 Stat. 892; as amended June 25, 1943, c. 144; 57 Stat. 164; 50 App. U.S.C. 309.

SECTION 9. The President is empowered, through the head of the War Department or the Navy Department of the Government, in addition to the present authorized methods of purchase or procurement, to place an order with any individual, firm, association, company, corporation, or organized manufacturing industry for such product or material as may be required, and which is of the nature and kind usually produced or capable of being produced by such individual, firm, company, association, corporation, or organized manufacturing industry.

Compliance with all such orders for products or material shall be obligatory on any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof and shall take precedence over all other orders and contracts theretofore placed with such individual, firm, company, association, corporation, or organized manufacturing industry, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any plant equipped for the manufacture of arms or ammunition or parts of ammunition, or any necessary supplies or equipment for the Army or Navy, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any manufacturing plant, which, in the opinion of the

Secretary of War or the Secretary of the Navy shall be capable of being readily transformed into a plant for the manufacture of arms or ammunition, or parts thereof, or other necessary supplies or equipment, who shall refuse to give to the United States such preference in the matter of the execution of orders, or who shall refuse to manufacture the kind, quantity, or quality of arms or ammunition, or the parts thereof, or any necessary supplies or equipment, as ordered by the Secretary of War or the Secretary of the Navy, or who shall refuse to furnish such arms, ammunition, or parts of ammunition, or other supplies or equipment, at a reasonable price as determined by the Secretary of War or the Secretary of the Navy, as the case may be, then, and in either such case, the President, through the head of the War or Navy Departments of the Government, in addition to the present authorized methods of purchase or procurement, is hereby authorized to take immediate possession of any such plant or plants, and through the appropriate branch, bureau, or department of the Army or Navy to manufacture therein such product or material as may be required, and any individual, firm, company, association, or corporation, or organized manufacturing industry, or the responsible head or heads thereof, failing to comply with the provisions of this section shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and a fine not exceeding $50,000.

The compensation to be paid to any individual, firm, company, association, corporation, or organized manufacturing industry for its products or material, or as rental for use of any manufacturing plant while used by the United States, shall be fair and just: *Provided,*

That nothing herein shall be deemed to render inapplicable existing State or Federal laws concerning the health, safety, security, and employment standards of the employees in such plant.

The first and second provisos in section 8 (b) of the Act entitled "An Act to expedite national defense, and for other purposes", approved June 28, 1940 (Public Act Numbered 671, Seventy-sixth Congress), are hereby repealed.

The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided,* That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a

strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking of possession thereof: *Provided further,* That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed.

War Labor Disputes Act.

Act of June 25, 1943, c. 144; 57 Stat. 164; 50 App. U.S.C. 1501-1509.

SECTION 4. Except as provided in section 5 hereof [section 1505 of this Appendix], in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940, as amended [section 309 of this Appendix], such plant, mine, or facility, while so possessed, shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

SECTION 5. When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of section 9 of the Selective Training and Service

Act of 1940, as amended [section 309 of this Appendix], the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility or their representatives, may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility. Upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

SECTION 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more

than $5,000, or to imprisonment for not more than one year, or both.

National Labor Relations Act.

Act of July 5, 1935, c. 372; 49 Stat. 449; 29 USCA §§ 151-166.

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

* * * * * * *

SECTION 2. When used in this Act—

* * * * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

* * * * * * *

RIGHTS OF EMPLOYEES

SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SECTION 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

REPRESENTATIVES AND ELECTIONS

SECTION 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in parts the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICE

SECTION 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

(c) The tesimony taken by such member, agent or agency or the Board shall be reduced to writing and

filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employee with or without back pay, as will effectuate the policies of this chapter * * *.

* * * * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States, (including the Courts of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to

make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree

enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION
WASHINGTON

Revised Regulations for the Operation of Coal Mines Under Government Control.

(11 Federal Register, 7567, etc.).

"Regulations for the Operation of Coal Mines Under Government Control," issued by the Secretary of the Interior on May 19, 1943, as amended July 29, August 13, and December 23, 1943 (8 F.R. 6655, 10712, 11344, 17339), with the exceptions specified in Section 50 hereof, are hereby amended and revised, as follows:

I. GENERAL

801.1. *Authority for Regulations*

These regulations are issued under the authority of Executive Order No. 9728, dated May 21, 1946 (11 F. R. 5593), authorizing and directing the Secretary of the Interior

> "to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, right, facilities, funds and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such

manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines."

801.2. *Scope of Regulations*

These regulations shall govern the operation of all coal mines placed under Government possession and control pursuant to Executive Order No. 9728, including any and all real and personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines and the distribution and sale of their products, for operation by the United States.

801.3. *Effect of Regulations*

These regulations shall supersede all prior orders or instructions governing the operation of such coal mines to the extent that such orders or instructions are inconsistent with these regulations. (See Section 50 infra as to superseding regulations heretofore in effect).

801.4. *Purpose of Operation*

The primary object of Government intervention in the operation of the said properties is the maintenance of full production in the interest of the war effort, the continued operation of the national economy during the transition from war to peace, and the preservation of the national economic structure in the present emergency. All duties and authorities set forth in these regulations are to be construed in the light of this purpose, and if any regulation interferes with the accomplishment of this purpose, prompt application must be

made to the Coal Mines Administration to secure the waiver or modification of such regulation.

801.5. *Plan and Policy of Operation*

Control of the operations of the coal mines will be exercised by the Government to the extent necessary to maintain maximum production. Wherever the cooperation of the company and its personnel can be secured, the existing organization of the mining company will be utilized, and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue. Where the prompt and effective cooperation of a company cannot be secured, appropriate action will be taken under Sections 30 and 31 of these regulations, or otherwise.

All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof and that the Government, having temporarily taken possession or custody, will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production.

801.6. *Definitions*

As used herein,

The term "coal mines" means the coal mines of which possession was taken by the orders of the Secretary of the Interior of May 21, 1946, and orders supplementary and amendatory thereto, and any and all real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the oper-

ation of such mines and the distribution and sale of their products.

The term "company" or "mining company" means the corporation, partnership, association, or individual in possession and control of coal mines immediately prior to the taking of possession of such coal mines by the Secretary of the Interior.

II. ORGANIZATION FOR OPERATION

801.10. *Supervision and Direction*

The power, authority, and discretion of the Secretary of the Interior with respect to the operation of the coal mines may, under the authority of Order No. 2199 of the Secretary of the Interior, dated May 21, 1946 (11 F. R. 5604), be exercised by the Coal Mines Administrator and by the Deputy Coal Mines Administrator (both hereinafter referred to as the Administrator), to the same extent and with the same effect as such power, authority, and discretion may be exercised by the Secretary of the Interior. The power, authority, and discretion of the Administrator may be exercised through such personnel of the Coal Mines Administration of the Department of the Interior and in such manner as the Administrator may determine.

* * * * * * *

801.15. *Designation of Operating Managers*

The operation of the coal mines of a mining company will ordinarily be entrusted to an officer of the company formerly in charge of operations who is authorized to act for the said company and who will, under appointment by the Administrator, during the period of

Government control, act as Operating Manager for the United States, while continuing to serve as an officer and employee of the mining company. At the request of the said company, such person may be removed from the position of Operating Manager for the United States, and an officer or employee of the company nominated by the company may be appointed by the Administrator.

Where the prompt and effective cooperation of the mining company in the operation of the coal mines under Government control cannot be secured, a person other than an officer or employee of the company may be designated as the Operating Manager for the United States by the Administrator.

Where a company is in receivership or trusteeship, the receiver or trustee will ordinarily be designated Operating Manager for the United States.

801.16. *Status of Operating Managers*

Any officer or employee of a mining company who, with the permission of, or without objection from the said company, accepts a designation as Operating Manager for the United States of the coal mines of said company shall, together with all other officers and employees, serve in full recognition of his responsibilities to the Government and subject to all orders and regulations of the Administrator, but he and all other officers and employees shall serve as agents and employees of the company with respect to all actions which they would have been empowered to take on behalf of the company in the absence of Government control of its property.

The Operating Manager shall continue to be subject to all restrictions and limitations imposed by the company upon his exercise of his authority. In respect of

any action to which or in which the company requires its special consent or concurrence, the Operating Manager shall obtain such consent or concurrence before he takes such action. If consent is denied, the Operating Manager shall so report to the Area Officer-in-Charge, stating the circumstances of the denial. The Area Officer-in-Charge shall transmit the report to the Administrator, and the Operating Manager may proceed to take the action in question only upon direction of the Administrator.

Designation of any person as Operating Manager for the United States shall not be deemed to constitute him as officer or employee of the United States within the meaning of Federal statutes governing personnel.

The appointment of any Operating Manager shall terminate at the discretion of the Administrator upon notice to the Operating Manager.

801.17. *Duties of Operating Managers*

Operating Managers shall perform for their companies ordinary duties of management in accordance with established policies and practices, so far as consistent with these regulations and the instructions and orders of the Administrator and Area Officer-in-Charge, and shall in addition perform all special duties placed on them as Operating Managers of the United States by these regulations, by their appointment instructions, so far as consistent with these regulations, and by such orders as the Administrator or the Area Officer-in-Charge may issue.

An Operating Manager is authorized to take all necessary action in the manner in which and through

the officials by which it has been customarily accomplished and may, as should be necessary and convenient, take action either under his customary title and designation or as "Operating Manager for the United States, (name of company)," as hereinabove and hereinafter specified. No Operating Manager for the United States of any mining company is authorized or shall be regarded as having authority, express or implied, to bind or impose any liability on the United States or any of its officials or agents in the absence of a specific direction or order by the Administrator to that effect. Nor shall any operations of any mine property in the possession and control of the Government, or the proceeds, earnings or liabilities of such mine property in any event be, or be regarded as being, for the account or at the risk or expense of the Government except as a specific written direction or order to that effect shall have been given by the Administrator.

III. OPERATION OF MINES

801.20. *Statement of Property Taken*

The Operating Manager of each mine shall promptly submit to the Area Officer-in-Charge of the Area in which the mine is located a statement specifically enumerating and defining the properties under his management, in accordance with a form to be furnished by the Administrator. Such statement shall be promptly submitted by the Area Officer-in-Charge to the Administrator with recommendations as to any corrections that may appear proper and shall be subject to such correction as the Administrator, or any other official specifically designated for the purpose by the Administrator, shall from time to time find to be necessary. A copy of such revised

statement shall be returned to each Area Officer-in-Charge to serve as a guide to him and any successor Operating Manager in the performance of their functions.

801.21. *Accounts and Records*

The Operating Manager shall set up and keep the books and records of the company in a manner such that the period of Government operation will be separate, or may be readily separated, from the operation of the company previously operating the mines as a private enterprise. The same set of books may be used so long as items of payments, receipts, and all other transactions engaged in on and after May 22, 1946, may be easily separated from items concerning transactions engaged in before that date.

The Operating Manager shall render such accounting as the Administrator may, from time to time, prescribe.

801.22. *Financial and Commercial Transactions*

Ordinary financial and commercial transactions shall be carried on so far as possible, in accordance with the customary procedures and policies of the mining company. The Operating Managers shall enter into such financial transactions, either by way of receipt or expenditure, as are necessary to continue the enterprise, utilizing any funds or properties due or belonging to the mining company, and shall draw upon the funds and accounts of the company, utilizing customary sources of credits or funds, and make all necessary disbursements.

The Operating Managers shall, if the need arises, inform all third persons with whom they enter into such

transactions that such transactions are being carried on, under the authority of the Government and the company, in accordance with customary procedures and policies, that the company remains subject to the usual methods of enforcement of its obligations, and that the Government expects that the acts and agreements of the company will be accorded the same consideration and effect as in the absence of Government control.

801.23. *Employment*

(a) Working conditions.

In accordance with Executive Order No. 9728 and Section 4 of the War Labor Disputes Act terms and conditions of employment which were in effect at the time possession of the mines was taken shall be maintained except as such terms and conditions of employment may be changed by order or direction of the Administrator, subject to the provisions of Section 5 of the War Labor Disputes Act, where appropriate.

(b) Collective bargaining.

In accordance with the terms of Executive Order No. 9728, the customary machinery for the adjustment of workers' grievances shall be maintained in all mines and the right of the workers shall be recognized to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operation of the mine.

(c) Employment benefits.

All benefits enjoyed by employees of the mine under private control, including State and Federal social insur-

ance payments and benefits, workmen's compensation coverage, and group insurance, and all arrangements governing the payment of wages, including war bond purchase plans and the check-off of union dues, shall be continued.

(d) Personnel.

Operating Managers shall use the customary personnel so far as practicable and take all steps to encourage miners to work under present wages and working conditions with the understanding that any eventual wage adjustments will be made retroactive, but they shall in no event use force; if any actual need has developed for maintenance of order by use of the military forces, they shall communicate with the appropriate Area Officer-in-Charge for transmission of said request to the proper officials.

All personnel of the mines, both officers and employees, shall be considered as called upon by Executive Order No. 9728, to serve the Government of the United States, but nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment.

801.24. *Application of Federal and State Law*

The mining companies, their personnel and their property are deemed to remain subject during the period of Government control to all Federal and State Laws and to actions, orders, and proceedings of all Federal and State courts and administrative agencies. The companies are expected to meet all Federal, State, and local taxes, contributions, and assessments in the customary manner.

The mining companies are deemed to remain subject to suit as heretofore. However, no Operating Manager or Area Officers-in-Charge is authorized to bring suit, accept service, or enter into any legal proceeding, on behalf of the United States without specific direction from the Administrator. Information as to the pendency, necessity, or probability of any legal proceeding which casts in question any right of the United States should be promptly transmitted by the Operating Manager to the Area Officer-in-Charge and by the latter officer to the Administrator, with appropriate recommendations concerning the assignment of legal counsel if such assignment is indicated.

The possessory interest of the United States in the properties of the companies is deemed to be protected by the criminal laws protecting United States property.

801.25. *Interim Procedure for Confirmation of Financial Responsibility by Mining Company*

(a) *Execution and Delivery of Instrument of Agreement and Certification*

Any mining company, by a duly authorized officer or agent, may execute and deliver to the Administrator an Instrument of Agreement and Certification (in the form to be prescribed by the Administrator) confirming (as hereinafter provided) the sole financial responsibility of the mining company for its operations. Such mining company may, however, hereinafter set forth, reserve to itself the right to assert claims for liability against the Government with respect to damage allegedly resulting from any specific direction or order of the Administrator. The Operating Manager for the coal mines of any mining company for which such Instru-

ment of Agreement and Certification is in effect shall not be subject to the requirements as to financial transactions and current accounting set forth in Section 26. The Instrument of Agreement and Certification may be terminated by the mining company at any time upon ten days' written notice, as hereinafter provided.

By said Instrument of Agreement and Certification (subject to reservation of rights to assert claims for damage allegedly resulting from any specific directions or orders as provided in paragraph (c) of this section) the mining company shall

i. agree and confirm as its understanding that the operations of the coal mines of the mining company, and all acts and omissions of the Operating Manager, from the date of the beginning of Government possession and control to the effective date of termination of the Instrument, have been and will continue to be for the financial account of the mining company and not for the account of the United States; and

ii. adopt and ratify all acts and omissions of the Operating Manager in the operation of the coal mines of the mining company during such period, and agree that the Government and its officials shall not be subject to any claims by the mining company or others by reason of the possession and control of the coal mines of the mining company during such period; and

iii. certify that during such period the mining company will not make any disposition of its funds or incur any indebtedness which will impair the working capital of the company so as thereby to jeopardize maintenance of the maxi-

mum possible production of coal at its coal mines.

(b) *Effect of Such Instrument*

Subject to the reservation of rights as provided in paragraph (c) of this section, the execution and delivery of such an Instrument of Agreement and Certification to the Administrator shall be deemed to constitute a waiver by the Government of all rights which it may have to an accounting with respect to all operations from the beginning of the period of Government possession and control to the effective date of termination of such Instrument, and a discharge of the Operating Manager from any liability to the Government with respect to all actions taken by him as such during that period.

(c) *Reservation of Right to Assert Against the Government Claims for Damage Alleged to Result from Specific Directions or Orders*

A mining company which has executed and delivered such an Instrument of Agreement and Certification may, nevertheless, reserve to itself the right to assert a claim for damage alleged to have been suffered, or threatened to be suffered, by it as the direct result of a specific direction or order of the Administrator, as hereinafter provided:

(1) As to any specific direction or order which has been issued prior to the date of the execution of its Instrument of Agreement and Certification, such reservation of right may be made by the mining company's transmitting to the Administrator, together with its executed Instrument of Agreement and Certification, a

writing, signed by a duly authorized officer or agent, which shall

i. specify the particular direction or order of the Administrator which the mining company asserts directly resulted in damage to the mining company;

ii. specify the particular action taken pursuant to such direction or order, which action would not have been taken except for such direction or order and which action, it is claimed, resulted in damage to the mining company, and

iii. specify the nature of the damage asserted to have been so caused and the amount thereof.

Upon such transmission to the Administrator of such written specifications, the mining company shall be deemed to have reserved all rights to assert a claim for damage alleged to have been suffered or threatened during the period of Government possession and control as the direct result of compliance with the specified direction or order, and the Government shall be deemed to have reserved all rights to assert by way of offset against any such claim of liability the benefits resulting to the mining company from Government possession and control, and to assert any other defense against such claim.

Failure by the mining company to transmit to the Administrator such a writing, together with its executed Instrument of Agreement and

Certification (unless upon request the Administrator shall extend the time for the transmission of the writing for good cause shown) shall be deemed to constitute acquiescence by the mining company that the consequences of all specific directions and orders issued by the Administrator prior to the date of the execution of its Instrument of Agreement and Certification shall be covered by clauses i and ii of the Instrument of Agreement and Certification.

(2) As to any specific direction or order which may be issued subsequent to the date of the execution of its Instrument of Agreement and Certification, such reservation of right may be made by the mining company's filing a timely protest with the Administrator, as follows:
If, upon the issuance by the Administrator of a specific direction or order to an Operating Manager for the coal mines of a mining company, the mining company desires to reserve the right to assert a claim for damage alleged to be threatened or to be suffered by it as the direct result of compliance with such specific direction or order, then the mining company shall protest such direction or order to the Administrator (as hereinafter provided), and in such written protest shall

i. specify the particular direction or order of the Administrator which the mining company asserts will directly result in damage to the mining company if complied with;

ii. specify the action which, it is asserted, is required by such direction or order to be

taken, which action would not be taken except for such direction or order, and which action, it is claimed, will result in damage to the mining company;

iii. specify the nature of the damage which the mining company asserts will be suffered by it as the result of compliance with such direction or order, and an estimate of the amount of such asserted threatened damage; and

iv. protest the specified direction or order. Such protest shall be dispatched as aforesaid to the Administrator, Department of the Interior, Washington, D. C., by registered mail or telegram within five days of the receipt by the Operating Manager of the direction or order protested.

Upon the dispatch of such a protest as above provided, the effectiveness of the direction or order, as it applies to the Operating Manager for the coal mines of the protesting mining company, shall be suspended pending further directions of the Administrator. If thereafter the Administrator, in writing, confirms the effectiveness of the protested direction or order as it applies to such Operating Manager, such Operating Manager shall forthwith carry into effect the protested direction or order, with any modifications made by the Administrator in his confirmation thereof.

Thereupon the mining company shall be deemed to have reserved all rights to assert a claim for damage alleged to have been suffered by it during the remainder of the period of Government possession and control as the direct result of compliance with such protested direction or order, and the Government shall be deemed to have reserved all rights to assert by way of offset against any such claim of liability the benefits resulting to the mining company from Government possession and control, and to assert any other defense against such claim.

In all other respects the provisions of the Instrument of Agreement and Certification shall continue in full force and effect and the Operating Manager for the coal mines of the protesting mining company shall continue not to be subject to the requirements as to financial transactions and current accountings set forth in Section 26. The Operating Manager, however, shall furnish to the Administrator, on his request, such pertinent information and data relating to the effect of compliance with the protested specific direction or order as the Administrator may request.

Failure by the mining company to file such a protest within the five days mentioned (unless upon request the Administrator shall extend the time for the filing of the protest for good cause shown) shall be deemed to constitute acquiescence by the mining com-

pany that the consequences of the said specific direction or order shall be covered by clauses i and ii of the Instrument of Agreement and Certification.

In the event that the Administrator shall expressly require that a specific direction or order issued by him shall be complied with prior to the lapse of the five-day interval for transmitting a protest as above provided, then the Operating Manager shall comply forthwith with said specific direction or order and the mining company may effect a reservation of right by transmitting, within ten days following the issuance of such express requirement, a writing in accordance with the specifications contained in sub-paragraph (1) above.

(d) *Termination of Effectivness of Instrument of Agreement and Certification*

Any mining company having executed an Instrument of Agreement and Certification, as above provided, may terminate the effectivness thereof as to all future acts performed by, or omissions of, the Operating Manager in the operation of the properties of the mining company, by transmitting written notice of such termination by telegram or registered mail, to the Administrator, Department of the Interior, Washington, D. C., such termination to become effective ten days after the receipt of such notice by the Administrator.

In the event of such termination, the Administrator may assume that the mining company claims or reserves

the right to claim that all operations from that date forward during the remainder of the period of Government possession and control of the mining property are for the account of the Government and accordingly that the Operating Manager for the United States and the mining company are accountable to the Government for their custodianship and disposition of proceeds from operations accrued during the balance of such period of Government possession and control.

Upon and after the effective date of termination of the Instrument of Agreement and Certification, as herein provided, the Operating Manager for the coal mines of the mining company terminating such Instrument shall be subject to the requirements as to financial transactions and current accountings set forth in Section 26.

(e) *Non-acquiescence in Claim of Liability, and Non-waiver of Right to Claim Liability Except as Specifically Waived*

None of the provisions of this section or of Section 26, and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence by the Administrator in any claim that operations during the period of Government possession and control are for the financial account of the Government, or acquiescence in any other claim that the Government or any of its officials are subject to any liability to the mining company or any other person or persons with respect to any such action, or otherwise. None of the provisions of this section or of Section 26, nor any action taken pursuant to any of them, shall be deemed to constitute a waiver by the mining company of any right which it may have to

assert a claim against the United States except as specifically waived by the execution and delivery of an Instrument of Agreement and Certification (subject to reservation of right to assert claims for damage alleged to result from specific directions or orders, as hereinabove provided).

(f) *Inapplicability of Certain Provisions of Section 40 to Mining Companies Executing an Instrument of Agreement and Certification Remaining Effective at Termination of Government Possession and Control*

Where an Instrument of Agreement and Certification has been executed and delivered by a mining company and remains in effect on the date Government possession and control of its properties is terminated by the Administrator pursuant to Section 40 of these regulations, the company will be deemed to have satisfactorily complied with the requirements of that section for the execution and delivery of Instrument No. 1 or Instrument No. 2 therein described, as the case may be, and, unless otherwise directed by the Administrator, the appointment of the Operating Manager for the mines of the company will be deemed to be terminated without further action by the Administrator.

(g) *Furnishing of Information and Compliance*

Nothing in this section or in Section 26 shall be deemed or construed to impair in any way the right of the Administrator from time to time to direct and require the furnishing of information pertinent to the operations of any mining company during the period of Government possession and control, having regard to the

purposes of such possession and control as set forth in Section 4 of these regulations, or the right of the Administrator to enforce compliance with orders or directions issued by him. Nor is anything in this section or in Section 26 to be deemed to limit in any way the right of the Administrator at any time to exercise his lawful authority to any degree or to any extent as circumstances arise which, in his opinion, necessitate the exercise of such authority in order to effectuate the purposes of Government possession and control as set forth in Section 4 of these regulations.

801.26. *Requirements as to Financial Transactions and Current Accountings*

The Operating Manager for the coal mines of any mining company for which an Instrument of Agreement and Certification as provided in Section 25 is not in effect shall not make major disbursements of an extraordinary nature or dividend payments and shall not incur indebtedness other than in the course of normal business unless:

(1) at least ten days prior to the making of such disbursement or payment or the incurring of such indebtedness, the Operating Manager shall have filed with the Administrator a notice of intention to make such disbursement or payment or to incur such indebtedness, specifying in detail the amount and nature of and the necessity for the proposed disbursement, payment, or indebtedness, and the effect thereof upon the preservation by the mining company of a working capital sufficient to enable it to maintain maximum possible production; and

(2) the Administrator shall have advised the Operating Manager that he has no objection thereto.

The Administrator may at any time request or direct such Operating Manager to take whatever steps may be appropriate with respect to: full and periodic accountings of the operation of the coal mines; inventories of all real and personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of the coal mines of the mining company and the distribution and sale of its products; the withdrawal of private management from further participation in the operation of the coal mines; and other pertinent matters. Upon the Administrator's request or direction, such Operating Manager shall furnish to him such data and information as he may request or direct pertaining to the period of operation under Government possession and control and a fair evaluation of the results thereof; the data requested may include such information for current periods as is specified in Section 40 for the entire period of Government possession and control. The Administrator may require that financial statements be certified by an independent Certified Public Accountant. Accountants and other agents of the Government shall be given reasonable access to all books, papers and inventories of the mining company.

IV. ENFORCEMENT OF REGULATIONS AND ORDERS

* * * * * * *

801.31. *Removal of Operating Managers*

Upon failure of an Operating Manager to comply with these regulations or the orders of the Administrator or the Area Officer-in-Charge or upon failure of a mining company to respect the action taken by its Operating Manager who is an official of the company, the Area Officer-in-Charge shall report to the Administrator the desirability of the removal of the Operating Manager, with such recommendations for a substitute as he may wish to make.

* * * * * * *

V. TERMINATION OF GOVERNMENT CONTROL

801.40. *Method of Termination*

Government possession and control of any property affected by these regulations will be terminated by the Administrator upon a determination by him that the requirements for the termination of such possession and control specified in the War Labor Disputes Act of June 25, 1943 have been fulfilled.

Such termination shall be effected by a formal order of the Administrator or by specific notice to the Operating Manager specifying the effective time of such termination and requiring the posting of a notice thereof on the property. Notice of such formal order shall be given to the Operating Manager.

After the termination of Government possession and control, and for the purpose of ascertaining the existence and amount of any claims against the United

States so that the administration of the provisions of Executive Order No. 9728 may be concluded in an orderly manner, the Administrator may require the submission by any mining company of information relating to operations during the period of Government possession and control as hereinafter provided.

The Operating Manager for the United States of each mining company with respect to which the United States Government has taken possession and control shall advise the Administrator when, in his opinion, such requirements for the termination of such possession and control have been fulfilled, specifying the date of declared restoration of productive efficiency, and furnishing to the Administrator the factual evidence supporting his opinion.

Forthwith upon the termination of such possession and control by the Administrator, the mining company may elect to execute and deliver to the Administrator one of the two instruments described in paragraphs (1) and (2) below:

Either:

(1) The mining company, by a duly authorized officer or agent, not later than ten days subsequent to such termination, unless such period is extended by the Administrator for good cause shown, shall execute and deliver to the Administrator an instrument of ratification (in the form to be prescribed by the Administrator) by which the mining company adopts and ratifies all acts performed by, and omissions of, the Operating Manager for the United States in the operation of the coal mines of the company during the period of Government control, and covenants and agrees that the Government of

the United States and its officials shall not be subject to any claims by the mining company or others by reason of the possession and control of the coal mines of the mining company.

The execution and delivery to the Administrator of such an instrument (hereinafter called Instrument No. 1) shall be deemed to constitute a waiver by the Government of all rights which it may have to an accounting with respect to all operations during the period of Government possession and control, and a discharge of the Operating Manager for the United States from any liability to the Government with respect to all actions taken by him as such, and, unless otherwise directed by the Administrator, the termination of the appointment of the Operating Manager for the United States without further action by the Administrator.

Or:

(2) The mining company, by a duly authorized officer or agent, not later than ten days subsequent to such termination, unless such period is extended by the Administrator for good cause shown, shall execute and deliver to the Administrator an instrument which specifically reserves to the mining company the right to assert a claim for damage alleged to have been suffered by it during the period of Government possession and control as the direct result of a specific direction or order of the Administrator, or his duly authorized agent, but which in all other respects is the same as Instrument No. 1. Such instruments shall

(a) specify the particular direction or order of the Administrator which the mining company asserts directly resulted in damage to the mining company;
(b) specify the particular action taken pursuant to such direction or order, which action would not have been taken except for such direction or order, and which action, it is claimed, resulted in damage to the mining company; and

(c) specify the nature of the damage asserted to have been so caused and the amount thereof.

The execution and delivery to the Administrator of such an instrument (hereinafter called Instrument No. 2), provided such instrument is in conformity with the above prescribed requirements, shall be deemed to constitute a waiver by the Government of all rights which it may have to an accounting with respect to all operations during the period of Government possession and control, expressly reserving the right, however, to assert by way of offset to any such claimed liability, benefits resulting to the mining company from Government possession and control and any other defense against such asserted liability. The execution and delivery to the Administrator of such an Instrument No. 2 shall further be deemed to constitute a discharge of the Operating Manager for the United States from any liability to the Government with respect to all actions taken by him as such and, unless otherwise directed by the Administrator, a termination of the appointment of such Operating Manager without further action by the Administrator.

The mining company shall specify to the Administrator such further detailed information with respect

to items (a), (b) and (c), above, as shall be requested or directed by the Administrator.

If, however, within ten days after the termination of possession and control by the Government, unless such period is extended by the Administrator for good cause shown, the mining company shall not execute and deliver to the Administrator either Instrument No. 1 or Instrument No. 2, as above provided, then the Administrator may assume that the mining company claims, or reserves the right to claim, that all operations during the period of Government possession and control of the property have been for the account of the Government, and accordingly that the Operating Manager for the United States and the mining company are accountable to the Government for their custodianship and disposition of proceeds from operations accruing during the period of Government possession and control. Pending the completion of such an accounting, the appointment of the Operating Manager for the United States shall continue in force for the purpose of such an accounting and appropriate determination with respect thereto.

Accordingly, in such an event the Operating Manager for the United States and the mining company shall forthwith cause to be prepared, and shall promptly furnish to the Administrator, the following:

1. A detailed Comparative Balance Sheet as of the date of the termination of Government possession and control and as of the date of the beginning of such period.
2. A detailed Statement of Income and Profit and Loss for the period of Government possession and control.

3. A physical inventory to be taken at the close of such period, for all items normally subject to inventory.
4. A Cost and Tonnage Statement for the period in the form to be prescribed by the Administrator.
5. A detailed analysis of all changes in Current Assets, Investments, Reserves, Fixed Assets and Deferred Charges accounts occurring during the period.
6. A detailed statement of all charges to Bad Debts or against Reserves therefor.
7. An explanation of the basis of charges for Depreciation, Depletion and Amortization in the period.
8. A detailed analysis of all changes in amounts due to or from affiliated companies.

Statements required under items 1 and 2 are to be certified by an independent Certified Public Accountant unless otherwise directed by the Administrator on the application for good cause shown by the mining company. Statements required under items 3 through 8 are to be certified by an authorized officer of the company.

In addition to the foregoing, the Operating Manager for the United States and the company shall furnish to the Administrator such additional data and information as the Administrator shall request or direct pertaining to the period of operation under Government possession and control and a fair evaluation of the results thereof.

For the purposes of checking any inventories, accountings or other information submitted under this Section 40, accountants and other agents of the Government shall be given reasonable access to all books,

papers and inventories of the mining company pertinent thereto.

The books and records of the mining company covering operations during the period of Government possession and control shall be maintained intact pending the completion by accountants or other agents of the Government of such inspection thereof as may be deemed necessary by the Administrator. The books and records of the mining company pertaining to operations subsequent to the termination of Government possession and control, and pending such inspection, shall be maintained in such fashion that the effect of such operations upon the condition of the company as of the end of the period of Government possession and control will be readily ascertainable.

None of the provisions of this Section 40, and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence by the Administrator in any claim that operations during the period of Government possession and control were for the financial account of the Government, or acquiescence in any other claim that the Government is subject to any liability to the mining company or any other person or persons with respect to any such action, or otherwise. None of the provisions of this section, nor any action taken pursuant to any of them, shall be deemed to constitute a waiver by the mining company of any right which it may have to assert a claim against the United States, except as waived by the execution and delivery of Instrument No. 1 or of Instrument No. 2.

801.50. *Regulations Superseded; Exceptions*

The provisions of these regulations supersede as of the effective date hereof the provisions of "Regulations for the Operation of Coal Mines under Government Control," issued by the Secretary of the Interior on May 19, 1943, as amended July 29, August 13, and December 23, 1943 (8 F. R. 6655, 10712, 11344, 17339), and made applicable to the mines possession of which was taken pursuant to Executive Order No. 9728 of 21 May 1946 except that criminal liabilities of any person, and civil rights, duties, and liabilities of any person and of the United States of America, thereunder, shall not be affected.

/s/ B. MOREELL
Coal Mines Administrator

Effective Date: 12:01 A.M., July 8, 1946

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1236

JONES & LAUGHLIN STEEL CORPORATION, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA AND JOHN L. LEWIS AS A REPRESENTATIVE MEMBER THEREOF; NATIONAL LABOR RELATIONS BOARD, AND PAUL M. HERZOG, JOHN M. HOUSTON AND GERARD D. REILLY, THE MEMBERS THEREOF; J. A. KRUG, SECRETARY OF THE INTERIOR; AND CAPTAIN N. H. COLLISSON, FEDERAL COAL MINES ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE GOVERNMENTAL RESPONDENTS[1] IN OPPOSITION

[1] The governmental respondents on whose behalf this brief is filed are Paul M. Herzog and John M. Houston, members of the National Labor Relations Board; J. A. Krug, Secretary of the Interior; and Captain N. H. Collisson, Federal Coal Mines Administrator. Process was never served on the National Labor Relations Board, and no appearance on its behalf was entered in the district court (see R. 64a–65a). The respondent Gerard D. Reilly ceased being a member of the Board on August 27, 1946, and his successor has not been substituted for him in this suit.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 188–191) is reported at 159 F. 2d 18.

JURISDICTION

The judgment of the United States Court of Appeals was entered on December 16, 1946 (R. 192). A petition for rehearing was filed on January 6, 1947 (R. 193–221) and denied on January 13, 1947 (R. 222). The petition for a writ of certiorari was filed on April 12, 1947. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Secretary of the Interior, having taken possession of petitioner's mines for the United States, was authorized to enter into and, after approval by the National Wage Stabilization Board and the President, to put into effect, an agreement recognizing a union, affiliated with the production employees' union and certified by the National Labor Relations Board as the exclusive bargaining representative for the supervisory employees at those mines, as such representative for the period of Government possession.[2]

[2] The Coal Mines Administrator, whose authority is also put in question in this proceeding, is a delegee of the Secretary of the Interior and vested with all of the powers, au-

2. Whether, in those circumstances, petitioner had standing to request (a) a judgment from the district court declaring the union without legal right to demand such recognition and (b) a decree enjoining the Secretary of the Interior from executing and performing such an agreement.

3. Whether, in such circumstances, the district court had jurisdiction to grant petitioner the relief requested.

STATUTES, EXECUTIVE ORDER, AND REGULATIONS INVOLVED

The statutes, executive order, and regulations involved are printed at pages 21 to 64 of the petition for a writ of certiorari.

STATEMENT

On May 22, 1946, pursuant to Executive Order 9728 (11 F. R. 5593; R. 15a–18a; Pet. 21–23), the respondent Krug, acting as Secretary of the Interior and on behalf of the United States, took possession of petitioner's four Pennsylvania bi-

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thority, and discretion conferred upon the Secretary by the Presidential order under which the Secretary took possession of the mines, and with all the obligations and discretion of the Coal Mines Administrator under the agreement between the Secretary, acting as Coal Mines Administrator, and the United Mine Workers of America, dated May 29, 1946 (the "Krug-Lewis agreement"). Order 2208, Secretary of the Interior, June 5, 1946, 11 F. R. 6238. The powers of the Administrator are, for purposes here relevant, coextensive with those here involved of the Secretary.

tuminous coal mines (R. 9a).[3] For many years theretofore, petitioner had operated those mines incidentally to its business of manufacturing steel and steel products (R. 4a). At all times since, the Secretary of the Interior and the Coal Mines Administrator "have been in exclusive possession * * * and in exclusive control" of the mines (R. 9a).

Approximately 135 supervisory employees and 3,000 operating and maintenance employees were employed at the mines when they were taken over by the Government (R. 6a). These 3,000 rank and file employees had for years been exclusively represented for collective bargaining purposes by the respondent United Mine Workers of America (the "UMWA") (R. 6a). The supervisory em-

[3] The executive order authorized and directed the Secretary to take possession of the bituminous coal mines of the Nation, to operate or arrange for their operation in such manner as he should deem necessary, and to do all things necessary for or incidental to the production, sale, and distribution of the coal there produced, prepared, or handled (par. 1, R. 16a, Pet. 21–22); it further authorized him to negotiate with the duly constituted representatives of the employees at the mines and to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of Government operation (par. 3, R. 17a, Pet. 22); and it directed him to "recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operation of the mines" (par. 7, R. 18a, Pet. 23).

ployees had not been represented by any labor union (R. 6a). Recently, however, a majority designated as their representative the United Clerical, Technical and Supervisory Employees Union, etc. (the "UCT"), a division of the UMWA (R. 85a, 162–163).

On May 29, 1946, an agreement was entered into between the Secretary of the Interior and the UMWA establishing, subject to the approval of the National Wage Stabilization Board and the President of the United States, the terms and conditions of employment at the mines for the period of Government possession (the "Krug-Lewis agreement"—R. 42a–50a). By paragraph 11 of that agreement (R. 49a–50a), it was provided that "With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board." Several days before the execution of the agreement, on May 27, 1946, the National Labor Relations Board had issued its Certification of Representatives, certifying that the UCT had been designated by a majority of the supervisory employees at petitioner's mines as their collective bargaining representative, and that pursuant to Section 9 (a) of the National Labor Relations Act, the UCT was the exclusive representative of all such employees

for purposes of collective bargaining (R. 9a–10a).[4] Thereupon, in accordance with paragraph 11 of the Krug-Lewis agreement, the Secretary of the Interior and the Coal Mines Administrator entered into negotiations with the UCT as representative of the supervisory employees at the mines (R. 40a). It was at this juncture, on June 13, 1946, that the complaint in this action was filed (R. 3a–20a).

The complaint, seeking injunctive relief and a declaratory judgment, challenged the right of the UMWA to demand that it be recognized as exclusive bargaining representative of the supervisory employees by reason of the Labor Board's Certification, and questioned the right of the President to empower the Secretary of the Interior, without petitioner's consent, to enter into any agreement which would recognize the UMWA as exclusive representative for such employees and which would effect changes in their employment conditions (R. 11a). As to the governmental respondents, the complaint requested an injunction "forbidding the making or performance" of any such agreement (R. 14a).[5] Peti-

[4] The Certification was issued pursuant to the provisions of Section 9 (c) of the National Labor Relations Act (July 5, 1935, c. 372, § 9 (c), 49 Stat. 453, 29 U. S. C. 159 (c)) and after a hearing had been held, a Decision and Direction of Election had been issued by the Board, and an election of representatives had been conducted (R. 7a–8a, 85a, 86a–130a).

[5] No relief was requested which would directly affect the conduct of the National Labor Relations Board or its members.

tioner moved at once for a temporary restraining order and a preliminary injunction (R. 20a–21a). The application for a restraining order was denied (R. 51a). Thereupon, the governmental respondents interposed a motion to dismiss the complaint or, in the alternative, for summary judgment (R. 64a–65a); the other respondents filed a motion to dismiss (R. 60a), and, also, an answer to the motion for a preliminary injunction (R. 131a–133a). Affidavits on behalf of the various parties having been filed (R. 39a, 52a, 58a, 81a) and argument of counsel heard (see R. 135a–138a), the district court, on June 26, 1946, handed down its order denying petitioner's motion for a preliminary injunction, granting the governmental respondents' motion for a summary judgment and the other respondents' motion to dismiss, entering summary judgment for respondents, and dismissing the complaint (R. 142a–143a).

After noting its appeal to the Court of Appeals (R. 143a–144a), petitioner, on July 17, 1946, sought an injunction from that court pending determination of the appeal (R. 148, 330). Answers to the petition for an injunction pending appeal (R. 223–275, 289–328) and supplemental affidavits (see R. 234, 277, 280) were filed and comprehensive argument heard, and the Court of Appeals entered an order, on August 16, 1946,

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denying petitioner's request for an injunction and advancing the case for argument (R. 149).[6]

While the case was thus pending in the court below, the Coal Mines Administrator entered into an agreement with the UCT on July 17, 1946, limited solely to the period of Government possession and establishing certain changes in the terms and conditions of employment for the supervisory employees at petitioner's mines (R. 311–320). Simultaneously, the Coal Mines Administrator, acting pursuant to the direction of Executive Order 9728 (R. 17a, Pet. 22) and in accordance with Section 5 of the War Labor Disputes Act (June 25, 1943, c. 144, § 5, 57 Stat. 165, 50 U. S. C. App., Supp. V, 1505; Pet. 27–28), applied to the National Wage Stabilization Board[7] for an order requiring those changes, and that Board, having found the changes fair and reasonable and not in conflict with any Federal statute or executive order, ordered that, upon approval by the President, they be made effective (R. 155–157). The President approved the Board's order on August 7, 1946 (*Ibid;* R. 189), and on August 17, 1946, the day following the denial of the application for an injunction pending appeal

[6] The court stated that it was of the opinion that petitioner had "failed to make a sufficient showing of injury, or of irreparable injury, which might result to it during the interim pending determination on the merits" (R. 149).

[7] The National Wage Stabilization Board was the then successor to the National War Labor Board for purposes of Section 5 applications. Executive Order 9672, 11 F. R. 221.

in the court below, the Coal Mines Administrator issued his Order No. CMAN–12, directing that the changes in the terms and conditions of employment for the supervisory employees at petitioner's mines which were provided by the agreement with the UCT be put into effect. 11 F. R. 9085.

The agreement with the UCT provided, in part, that the union file a charge with the National Labor Relations Board against petitioner for refusing to bargain, "to the end that that company may have an opportunity to obtain a final judicial determination of the rights of supervisors at its mines under the National Labor Relations Act" (R. 319). In accordance with that provision, the UCT filed such a charge on August 22, 1946 (R. 159–160), a complaint was issued by the Labor Board (R. 160–164), an answer filed by petitioner (R. 165–169), a hearing held, and a final order issued by the Board on December 30, 1946, directing petitioner to recognize the UCT as exclusive representative of the supervisory employees. A petition for enforcement of that order was filed in the Third Circuit Court of Appeals, where it is now pending (Pet. 5).

Meanwhile, on December 16, 1946, the court below had announced its decision in this case, affirming the judgment of the district court (R. 188–191), and judgment to that effect was entered on December 16, 1946 (R. 192).

ARGUMENT

The Court of Appeals, conceiving that the single issue before it for determination was the Government's authority to establish changes in terms and conditions of employment in mines in its possession (R. 189), held that such authority was amply supplied by statute and by the very nature of Government possession (R. 190). Reading the existing agreement with the UCT (R. 311–320) as in effect recognizing that union as exclusive bargaining representative for the supervisory employees at petitioner's mines and the Wage Stabilization Board's order of approval (R. 155–157) as sanctioning such recognition, it held such action authorized and petitioner in no position to complain (R. 190).[8] It felt no

[8] The contract with the UCT provided, among other things, for a check-off of union dues (R. 315–316) and the settlement of disputes through negotiation with union representatives (R. 312–313, 317–318). The agreement also contained the following provision: "With respect to recognition of the Union as the sole and exclusive agency and representative of the supervisory employees, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board" (R. 315). Respondents viewed the agreement as one in effect recognizing the UCT as the exclusive bargaining agent for the supervisors (see R. 296) and interpreted the order of the Wage Stabilization Board (R. 155–157), approving the check-off and grievance procedures there provided, as, in substance, sanctioning such recognition. The court below agreed with respondents' construction (R. 189, 190). Petitioner, however, insists that the contract with the UCT did not constitute recognition of the union as exclusive bargaining representative and sug-

need to pass on the propriety of the Labor Board's certification or on the legal status of the union under that certification (R. 189).

Putting aside considerations as to whether the district court had jurisdiction to grant the relief requested, we submit that the judgment of the court below was clearly correct and that no review by this Court is warranted.

1. The authority of the Secretary of the Interior to extend recognition to the UCT or any other union representing employees at petitioner's mines is expressly supplied by statute and executive order. Petitioner's mines were taken over by the United States pursuant to Presidential order issued, in part, pursuant to the provisions of Section 9 of the Selective Training and Service Act of 1940, as amended by Section 3 of the War Labor Disputes Act (September 16, 1940, c. 720, § 9, 54 Stat. 892, as amended June 25, 1943, c. 144, § 3, 57 Stat. 164; 50 U. S. C. App., Supp. V, 309; Pet. 24–27). That Section enabled the President, under certain specified conditions, to take possession of any mine for "use and operation by the United States or in its interests."

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gests that as an important consideration here (Pet. 10–11, 12). We cannot appreciate its significance. If petitioner's view of the agreement is the correct one, it has nothing to complain of. For there is no showing that the Government officers or the unions involved intend to enter into any contract more definite as to recognition than the one now extant; to the contrary, there appears to be an intention not to do so (see R. 40a–41a).

Section 5 of the War Labor Disputes Act (June 25, 1943, c. 144, § 5, 57 Stat. 165; 50 U. S. C. App., Supp. V, 1505; Pet. 27–28), in turn, authorized the Government agency operating a mine so taken to apply to the National War Labor Board [9] "for a change in wages or other terms or conditions of employment" and empowered the Board to "order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder," which order, upon approval by the President, was to become binding on the operating agency. Executive Order 9728 (11 F. R. 5593; R. 15a–18a; Pet. 21–23), under which the Secretary was acting with respect to petitioner's mines, reiterated the vesting of such authority in him.

These grants of power—the very statutes and the very executive order involved here—were only recently considered in *United States* v. *United Mine Workers of America,* No. 759, this Term, March 6, 1947. This Court there found that in enacting Section 3 of the War Labor Disputes Act, *supra,* "Congress intended that by virtue of Government seizure, a mine should become, for purposes of production and operation, a Government facility in as complete a sense as if the

[9] At the time of the commencement of this action, to the successor National Wage Stabilization Board. See note 7, p. 8, *supra.*

Government held full title and ownership" (*Id.*, per Vinson, C. J., slip copy, p. 23) and referred with apparent approval to the Government's utilization of the procedures of Section 5 of the Act, *supra,* to bring about changes in employment conditions at Government-possessed mines (*Id.*, pp. 24, 25).[10] In the light of the Court's recent opinion in that case, there is no question that the Secretary of the Interior had the authority to take the action challenged here.

Nor is there anything startling in these grants of power. They constitute no more than an application to properties seized during wartime, of the established authority in the Government, without restriction, to conduct its business and operate its property with whomsoever and upon whatever terms and conditions it desires. See *Perkins* v. *Lukens Steel Co.,* 310 U. S. 113, 127; *Ken-Rad Tube and Lamp Corp.* v. *Badeau,* 55 F. Supp. 193, 197 (W. D. Ky.). Obviously, where the drastic power of seizure is employed by the Government to avoid or terminate interruptions in industry consequent upon labor disturbances, the Government officers in charge must be permitted to negotiate with the labor representatives involved and to make changes in the existing working conditions. To withhold that power from the Government agency made responsible for the operation of Government-possessed plants might pre-

[10] Compare the concurring and dissenting opinion of Black and Douglas, JJ., slip copy, p. 3.

vent it from eradicating the roots of the labor disturbances which initially compelled Government seizure and thus frustrate the Congressional purposes. See *American Economic Mobilization* (1942), 55 Harv. L. R. 427, 527.

2. Contrary to petitioner's suggestion, the power of the Secretary in respect of employees is not restricted by the National Labor Relations Act. Petitioner is, of course, mistaken when it contends that a labor union, so certified by the National Labor Relations Board, is not qualified to demand recognition as the exclusive representative for supervisory employees until all the proceedings before the Board and courts which are provided by Section 10 of the National Labor Relations Act (July 5, 1935, c. 372, 49 Stat. 453, as amended, 29 U. S. C. 160) have first been exhausted. There is nothing in that Act which prohibits the execution and effectuation of an agreement of recognition with the UCT, or which prohibits the union from demanding such recognition. The "right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer * * * is a fundamental right" which is theirs independently of the National Labor Relations Act. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33. And a labor union may achieve the status of exclusive employee representative by contract with the em-

ployer notwithstanding the absence of Labor Board certification or proceeding.[11]

When petitioner had possession of its mines, whether or not the Labor Board had certified the UCT as exclusive representative for its supervisors and whether or not such certification, if issued, were valid, it could have so recognized the union. Petitioner says, however, that the Secretary of the Interior, who now has possession of the mines on behalf of the United States, cannot do the same thing, without petitioner's consent. But, as the court below has held: "The Government, in its capacity as operator of the mines, stands on an equal footing so far as the period of Government operation is concerned" (R. 190). Cf. *United States* v. *United Mine Workers of America, et al., supra.* To hold that notwithstanding Government seizure, Government officers must wait on the mine owners' acquiescence before changing working conditions in the mines would be to reduce the act of Government possession to no more than a futile gesture and to frustrate its purpose—the liberation of the economy from interruptions consequent upon labor disturbances.

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[11] "* * * While the National or State labor boards are frequently asked to make determinations on which union has a majority, it is possible, of course, for the union and employer to agree on exclusive recognition or even a closed shop without the question being referred to a Government agency for determination." U. S. Dept. of Labor, *Union Agreement Provisions*, H. Doc. No. 723, 77th Cong., 2d Sess., p. 24.

The certification issued by the National Labor Relations Board is irrelevant to the issues in this suit. The Secretary of the Interior might have recognized the UCT as exclusive bargaining agent without requiring that it be certified as such; that, by paragraph 11 of the Krug-Lewis agreement (R. 49a–50a), he did make Labor Board action a prerequisite to recognition is of no significance here. There is no provision, either in the statute or executive order, requiring resort to the Labor Board; reference to the Labor Board is entirely optional. This is plainly not that type of suit which appropriately poses the question heretofore reserved by this Court and which petitioner now asks this Court to decide—whether the Act has excluded judicial review of a certification under Section 9 (c) by an independent suit brought in the district courts. *American Federation of Labor* v. *N. L. R. B.*, 308 U. S. 401, 412; *Inland Empire District Council* v. *Millis*, 325 U. S. 697, 699–700. For, since any agreement into which the Secretary of the Interior has entered or can enter can be effective, as petitioner itself acknowledges (R. 12a–13a), only for the period of Government possession and can be binding only on the Government and not on petitioner, except with its consent, the Secretary's reliance on the certification, such as it is, can in no event result in legal injury to petitioner.[12]

[12] If the propriety of the certification were properly before the Court, its validity would not seem to be open to serious

3. The ruling of the court below, upholding the Government's authority, is so clearly correct that it seems superfluous to consider the jurisdictional obstacles to this suit. The district court's lack of jurisdiction should, however, be noted.

It is clear, initially, that petitioner has not sustained and cannot sustain any injury to any of its legally protected interests by virtue of an agreement whereby the Government recognized the UCT. Any such agreement, as we have already noted (*supra,* p. 16), can be maintained in effect only so long as the Government remains in possession of the mines and can in no way bind petitioner. "Case or controversy" under the Constitution, a prerequisite to Federal jurisdiction, is, therefore, lacking. See *Coffman* v. *Breeze Corporations,* 323 U. S. 316, 324; *Ashwander* v. *T. V. A.,* 297 U. S. 288, 324.[13]

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question in the light of the recent decision in *Packard Motor Car Co.* v. *N. L. R. B.*, No. 658, this Term, March 10, 1947.

[13] Petitioner can claim no better standing by virtue of statute. Section 5 of the War Labor Disputes Act (50 U. S. C. App., Supp. V, 1505; Pet. 27–28) affords owners of property taken over by the Government no right to be heard to complain of changes in employment conditions effected there pursuant to that section. The proviso in Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892), "That nothing herein shall be deemed to render inapplicable existing State or Federal laws concerning the health, safety, security, and employment standards of the employees * * *" in plants in Government possession, was intended to protect only such rights as employees might have

Second, since petitioner's mines are now in the Government's possession, this suit, brought against officials of the United States in their official capacity to enjoin them from establishing conditions relating to employment practices in those mines, is, in substance, a suit against the United States. *Wells* v. *Roper,* 246 U. S. 335; *Louisiana* v. *McAdoo,* 234 U. S. 627; *Minnesota* v. *Hitchcock,* 185 U. S. 373.

Third, the action invites judicial intervention, the effect of which may be to slow down the work of the mines and to impede the conversion of the Nation's economy from a war to a peacetime basis; and the courts, reluctant to control the executive discretion in normal times and as to ordinary functions (*Adams* v. *Nagle,* 303 U. S. 532, 540; *United States ex rel. Greathouse* v. *Dern,* 289 U. S. 352, 360; *United States* v. *Interstate Commerce Commission,* 294 U. S. 50), certainly will not be moved to control executive discretion in the circumstances of this case.

4. Moreover, the authority of the Secretary of the Interior which petitioner questions in this case will, in the absence of additional legislation, terminate on June 30, 1947. By virtue of the Presidential proclamation respecting termination of hostilities (Proclamation No. 2714, December 31, 1946, 12 F. R. 1), the provisions of the War

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had prior to Government possession, not to create rights in employers. See Sen. Wagner, 86 Cong. Rec. 11095, August 28, 1940.

Labor Disputes Act cease to be effective on that day. Section 10, War Labor Disputes Act (June 25, 1943, c. 144, § 10, 57 Stat. 168; 50 U. S. C., Supp. V, 1510). By June 30, 1943, the possession of petitioner's mines will be returned to petitioner (Section 3, War Labor Disputes Act, June 25, 1943, c. 144, § 3, 57 Stat. 164; 50 U. S. C. App., Supp. V, 1503), and any and all agreements made by the Government with the UMWA and the UCT will terminate.

CONCLUSION

The decision of the court below is correct, and there exists no conflict. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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